



February 11, 2010

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United States Environmental Protection Agency  
Region IX, Southern California Field Office  
600 Wilshire Avenue, Suite 1420  
Los Angeles, California 90017

**Re: Yosemite Creek Superfund Site, San Francisco, CA  
Kelly-Moore Paint Company, Inc., Response to 104(e) Information Request**

This letter responds to the October 15, 2009 request for information ("RFI") of the United States Environmental Protection Agency ("EPA") to Kelly-Moore Paint Company, Inc. ("KMPC"), with regard to the Yosemite Creek Superfund site (the "Site"). It is KMPC's understanding that the Yosemite Creek Superfund site is adjacent to the Bay Area Drum site ("BAD Site"), located at 1212 Thomas Avenue in San Francisco, California ("BAD Site"). Subject to both the general and specific objections noted below, and without waiving these or other available objections or privileges, KMPC submits the following response to the RFI. This response is timely submitted to EPA, consistent with the February 15, 2010 deadline specified in e-mail correspondence from Mr. Whitenack, of EPA, to Mr. Boer, outside counsel for KMPC.

In responding to the RFI, KMPC has undertaken a diligent and good faith search for documents and information in its possession, custody or control that are relevant to this matter. As addressed in more detail below, however, KMPC is not in possession of any information or documentation indicating that it ever sent its drums and/or arranged for the transportation of any drums to the BAD Site. Due to the lack of nexus between KMPC and the BAD Site, in March of 2004 the California Department of Toxic Substances ("DTSC") agreed to remove KMPC from future oversight billings in connection with the BAD Site.

The RFI is broadly drafted and purports to seek a great deal of information that is not relevant to the Site or the alleged contamination at the Site. KMPC presumes that EPA has identified an alleged connection between the BAD Site and the KMPC manufacturing facility located at 1015 Commercial Street, in San Carlos, California (the "KMPC Facility") through DTSC's files. However, a number of the RFI questions seek information regarding facilities other than the KMPC Facility and/or disposal sites other than the BAD Site, extending to *all* KMPC facilities in California and *all* KMPC facilities outside California that shipped drums or other containers to *any* location in the entire state of California. These other facilities throughout California and the United States have no nexus to the Site, nor has any nexus been alleged by any potentially responsible party or regulatory agency. To the extent these questions seek

information that is not relevant to the Site, they are beyond the scope of EPA's authority as set forth in Section 104(e)(2)(A) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

The RFI defines "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, dichlorodiphenyltrichloroethane ("DDT"), chlordane, dieldrin, and polychlorinated biphenyls ("PCBs")." However, as addressed in the objections and responses below, certain RFI requests seek much broader information regarding numerous additional hazardous substances. As such, these requests go beyond the specific chemicals for which there is any evidence of a release or threatened release to the environment at the Site and are not, therefore, relevant to the Site. KMPC has limited the scope of its responses to the COCs identified by EPA.

The California Department of Toxic Substances Control ("DTSC") has conducted an extensive investigation of the BAD Site. DTSC's investigation included an information request to KMPC and DTSC files include KMPC's Response to DTSC's information request, among other documents. A copy of KMPC's October 1, 1992 response to DTSC's information request is included as Exhibit 1. The information in this response is based upon additional investigation that occurred since October of 1992. We understand that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

If EPA has any additional questions about this matter, KMPC requests that all future contact be directed to:

Mr. Robert Stetson  
Kelly-Moore Paint Company  
Director of Risk Management  
987 Commercial Street, San Carlos, CA 94070  
(650) 592-8337

With a copy to:

Tom Boer, Esq.  
Barg Coffin Lewis & Trapp  
350 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94104  
(415) 228-5400

KMPC is prepared to continue to cooperate with EPA to address any questions about the Site or this response.



## GENERAL OBJECTIONS

KMPC asserts the following general privileges, protections and objections with respect to the RFI and each information request therein.

1. KMPC asserts all privileges and protections it has in regard to the documents and other information sought by EPA, including the attorney-client privilege, the attorney work product doctrine, all privileges and protections related to materials generated in anticipation of litigation, the settlement communication protection, the confidential business information (“CBI”) and trade secret protections, and any other privilege or protection available to it under law. In the event that a privileged or protected document has been inadvertently included among the documents produced in response to the RFI, KMPC asks that any such document be returned to KMPC immediately and here states for the record that it is not thereby waiving any available privilege or protection as to any such document.
2. In the event that a document containing CBI or trade secrets has been inadvertently included among the numerous documents provided in response to the RFI, KMPC asks that any such documents be returned to KMPC immediately so that KMPC may resubmit the document in accordance with the applicable requirements for the submission of Confidential Information.
3. KMPC objects to any requirement to produce documents or information already in the possession of a government agency, including but not limited to DTSC, or already in the public domain. As noted above, DTSC conducted an extensive investigation of the BAD Site and KMPC’s operations in connection with it. DTSC’s investigation included an information request to KMPC and the DTSC files include KMPC’s Response to DTSC’s information request. EPA is already in possession of DTSC’s files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA. Notwithstanding this objection, and without waiving it, KMPC may produce certain information or documents in its possession, custody, or control that it previously provided to or obtained from government agencies that contain information responsive to the RFI.
4. KMPC objects to Instruction 4 to the extent it seeks to require KMPC, if information responsive to the RFI is not in its possession, custody, or control, to identify any and all persons from whom such information “may be obtained.” KMPC is aware of no obligation that it has under Section 104(e) of CERCLA to identify all other persons who may have information responsive to EPA information requests and is not otherwise in a position to identify all such persons who may have such information.
5. KMPC objects to Instruction 5 on the ground that EPA has no authority to impose a continuing obligation on KMPC to supplement these responses. KMPC will, of course, comply with any lawful future requests from EPA to provide additional information.
6. KMPC objects to Instruction 6 in that it purports to require KMPC to seek and collect information and documents in the possession, custody or control of individuals not within the custody or control of KMPC. EPA lacks the authority to require KMPC to seek information not in its possession, custody or control.

7. KMPC objects to the RFI's definition of "document" or "documents" in Definition 3 to the extent it extends to documents not in KMPC's possession, custody, or control. KMPC disclaims any responsibility to search for, locate, and provide EPA copies of any documents "known by KMPC to exist" but not in KMPC's possession, custody, or control.
8. KMPC objects to the RFI's definition of "Facility" or "Facilities" in Definition 4 because the terms are overbroad to the extent that they extend to facilities with no connection to either the Site or the BAD Site. Moreover, the term "Facilities" as defined in the RFI is confusing and unintelligible as the term is defined as having separate meanings in Definition 4 and Request No. 3.
9. KMPC objects to the definition of "identify" in Definition 7 to the extent that the definition encompasses home addresses of natural persons. Subject to this objection, current KMPC employees and any other natural persons are identified by name and corporate address.
10. KMPC objects to the definition of "you," "Respondent," and "KMPC" in Definition 14 because the terms are overbroad and it is not possible for KMPC to answer questions on behalf of all the persons and entities identified therein. Notwithstanding this objection, and without waiving it, KMPC has undertaken a diligent and good faith effort to locate and furnish documents and information in its possession, custody, and control that are responsive to the RFI.
11. KMPC objects to EPA's requests that KMPC provide EPA separately information that is contained in documents being furnished by KMPC in response to the RFI. Where documents have been provided in connection with a response, information sought by EPA in the corresponding request for information that is set forth in those documents is not furnished separately. To do otherwise would be unduly burdensome.



## **RESPONSES TO OCTOBER 15, 2009 EPA INFORMATION REQUESTS**

1. *Describe generally the nature of the business conducted by Respondent and identify the products manufactured, formulated, or prepared by Respondent throughout its history of operations.*

### **RESPONSE TO RFI No. 1:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying each of the products manufactured by KMPC is not feasible due to the vast number and/or different products manufactured over an extensive period of more than sixty years.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

KMPC was founded in 1946 and has operated continuously in San Carlos, California since that date. KMPC manufactures a variety of architectural coatings, including paints, clear coatings, and specialty coatings. KMPC also operates manufacturing facilities in Washington and Texas, and a chain of retail paint stores in the western United States.

2. *Provide the name (or other identifier) and address of any facilities where Respondent carried out operations between 1940 and 1988 (the "Relevant Time Period") and that:*

- a. *ever shipped drums or other containers to the BAD Site for recycling, cleaning, reuse, disposal, or sale.*
- b. *are/were located in California (excluding locations where ONLY clerical/office work was performed);*
- c. *are/were located outside of California and shipped any drums or other containers to California for recycling, cleaning, reuse, disposal, or sale (for drums and containers that were shipped to California for sale, include in your response only transactions where the drums and containers themselves were an object of the sale, not transactions where the sole object of the sale was useful product contained in a drum or other container).*

### **RESPONSE TO RFI No. 2:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, in addition to facilities with a connection to the BAD Site, Request No. 2 purports to also seek information regarding *any* KMPC facility located in California (excluding locations where ONLY clerical/office work was performed) and *any* KMPC facility located outside of California that shipped drums or other containers to *any*

location in California, even to locations other than the BAD Site. These other facilities have no nexus with the BAD Site, and thus this request seeks information that is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

See Response to RFI No. 1. Since 1946, KMPC has manufactured architectural coatings, including paints, at the KMPC Facility. As such, raw materials are received and stored at the KMPC Facility and then mixed together to create a finished product for sale. Finished products are usually produced in containers 5 gallons in size or less and are temporarily stored in warehouses at the KMPC Facility before they are shipped to our retail stores. The only nexus alleged between KMPC and the BAD Site is through the KMPC Facility in San Carlos. As detailed below, however, KMPC never sent its drums to the BAD Site.

In connection with the investigation of the BAD Site by the California Department of Toxic Substances ("DTSC") and negotiations with potentially responsible parties, KMPC conducted a thorough review of its files, including invoices and shipping tickets, to determine whether any of its drums were sent to the BAD Site. The investigation confirmed that KMPC did not send any of its drums to the BAD Site. Rather, during the relevant period that the BAD Site was in operation, KMPC sent its drums to the Lorentz Barrel and Drum Site in San Jose, California. There is no reason that KMPC would have sent drums to more than one site for reconditioning.

In the course of a further investigation in the late 1990s, KMPC located 12 manifests indicating that Myers Drum Company (a former owner/operator at the BAD Site) picked up drums from the KMPC Facility for the account of Ashland Chemical Company ("Ashland") in the 1970s. These were not, however, KMPC drums. Rather, these manifests represent drums in which Ashland products were shipped to KMPC. Ownership of the drums was retained by Ashland and they were picked up, at Ashland's direction, from the KMPC Facility on Ashland's account for reconditioning. It appears that Ashland directed the drums to the BAD Site after their retrieval from KMPC. Copies of the relevant manifests are attached as Exhibit 2 to this response.

To further investigate the circumstances associated with the ownership and shipment of the Ashland drums, KMPC interviewed former employees with knowledge of the KMPC Facility's receiving protocols and off-site drum shipments. Those interviews confirmed the following:

1. KMPC received drums from Ashland containing bulk materials used in the manufacture of KMPC's paint products;
2. Ashland drums remained Ashland's property;
3. KMPC was required to make a deposit with Ashland to ensure the return of the drums;
4. it was KMPC's policy and practice to return all deposit drums to Ashland;



5. Ashland drums were blue in color, and therefore distinguishable from drums received from other suppliers and/or other drums used by KMPC;
6. Once a stockpile of Ashland drums had accumulated at the KMPC Facility, KMPC contacted Ashland, and Ashland, *not KMPC*, arranged for the drums to be picked up by a transporter; and
7. the transporter would arrive at the KMPC Facility, load the Ashland drums, and transport them for reconditioning to a site selected by Ashland and/or the transporter, but not by KMPC.

Copies of KMPC Employee Declarations are provided as Exhibits 3 and 4 to this response. The information provided by former KMPC employees, therefore, is consistent with the above-described manifests, which state that drums were “received from” KMPC at the BAD Site, “*for Ashland.*”

Finally, it is (and has been) KMPC’s custom and practice to completely drain any drums sent for reconditioning. As such, KMPC does not believe there would be any residue left in any drums KMPC sent out for reconditioning.

Based upon KMPC’s diligent search of its records and the information collected above, KMPC has no information indicating that it sent its own drums or waste, and/or arranged for the transportation of any drums, to the BAD Site.

Counsel for KMPC sent DTSC a letter, dated May 7, 1996, addressing the lack of any evidence indicating that KMPC had a relationship to the BAD Site and raising concerns about why KMPC had been identified as a PRP in connection with the BAD Site. A copy of this letter is provided as Exhibit 5 to this response.

After conducting additional fact investigation, as discussed above, counsel for KMPC sent DTSC another letter, dated February 11, 2004, requesting that DTSC reconsider the designation of KMPC as a responsible party at the BAD Site. A copy of this letter is provided as Exhibit 6 to this response. DTSC responded on March 26, 2004 and, agreeing that KMPC should not continue to be designated as a responsible party at the BAD Site, directed that the DTSC cost recovery unit remove KMPC from future billings for the BAD Site. A copy of the DTSC letter is provided as Exhibit 7 to this response.

3. *Provide a brief description of the nature of Respondent's operations at each Facility identified in your response to Question 2 (the "Facilities") including:*

- a. *the date such operations commenced and concluded; and*
- b. *the types of work performed at each location over time, including but not limited to the industrial, chemical, or institutional processes undertaken at each location.*

**RESPONSE TO RFI No. 3:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. In particular, but without limiting the generality of the foregoing objection, KMPC objects to the request in (b.) that it describe "types of work performed at each location over time . . . ." Without an identification by EPA of the types of work it is referring to, it would be virtually impossible, given the broad nature of possible work at various facilities, to describe each and every type of work that was performed at any facility. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

See Response to RFI Nos. 1 and 2.

4. *For each Facility, describe the types of records regarding the storage, production, purchasing, and use of Substances of Interest ("SOI") during the Relevant Time Period that still exist and the periods of time covered by each type of record.*

**RESPONSE TO RFI No. 4:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome to the extent it seeks to require KMPC to describe "types of records." Where documents have been provided in response to this RFI, each and every document regarding SOIs is not also "identified" by describing its contents. KMPC further objects to Request No. 4 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus KMPC has limited its review of documents and information to the COCs identified by EPA.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

See Response to RFI Nos. 1 and 2.



5. *Did Respondent ever (not just during the Relevant Time Period) produce, purchase, use, or store one of the COCs (including any substances or wastes containing the COCs) at any of the Facilities? State the factual basis for your response.*

**RESPONSE TO RFI No. 5:**

In addition to the General Objections set forth above, KMPC objects to this request as unauthorized by law to the extent it is overbroad, and unduly burdensome. By removing any temporal limit and any nexus between COCs at KMPC's Facilities and the BAD Site, Request No. 5 purports to seek information relating to KMPC's Facilities that is not relevant to contamination at the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

KMPC manufactures paint products containing zinc compounds at the KMPC Facility. As such, KMPC purchases, uses, and stores certain zinc compounds, and products containing zinc compounds at the KMPC Facility.

6. *If the answer to Question 5 is yes, identify each COC produced, purchased, used, or stored at each Facility.*

**RESPONSE TO RFI No. 6:**

KMPC repeats the objections specified in response to RFI No. 5.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: Zinc Compounds.

7. *If the answer to Question 5 is yes, identify the time period during which each COC was produced, purchased, used, or stored at each Facility.*

**RESPONSE TO RFI No. 7:**

KMPC repeats the objections specified in response to RFI No. 5. Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

Zinc compounds are presently used at the KMPC Facility. Zinc compounds have been used at the KMPC Facility for decades, likely since 1946 or thereabouts.

8. *If the answer to Question 5 is yes, identify the average annual quantity of each COC produced, purchased, used, or stored at each Facility.*

**RESPONSE TO RFI No. 8:**

KMPC repeats the objections specified in response to RFI No. 5. KMPC also objects to that the requested information is not relevant to the Site, since KMPC did not send any zinc compounds to the BAD Site.

9. *If the answer to Question 5 is yes, identify the volume of each COC disposed by the Facility annually and describe the method and location of disposal.*

**RESPONSE TO RFI No. 9:**

KMPC repeats the objections specified in response to RFI No. 5. KMPC also objects to that the requested information is not relevant to the Site, since KMPC did not send any zinc compounds to the BAD Site.

10. *Did Respondent ever (not just during the Relevant Time Period) produce, purchase, use, or store hydraulic oil or transformer oil at any of the Facilities? State the factual basis for your response to this question.*

**RESPONSE TO RFI No. 10:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. By removing any temporal limit and any nexus between hydraulic fuel or transformer oil at KMPC's Facilities and the BAD Site, Request No. 10 purports to seek information relating to KMPC's Facilities that is not relevant to contamination at the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

KMPC has identified no information or documentation that would indicate that the KMPC Facility ever sent hydraulic oil or transformer oil to the BAD Site. See Response to RFI No. 2 above.



11. *If the answer to Question 10 is yes, identify each specific type of hydraulic oil and transformer oil produced, purchased, used, or stored at each Facility.*

**RESPONSE TO RFI No. 11:**

Not applicable.

12. *If the answer to Question 10 is yes, identify the time period during which each type of hydraulic oil and transformer oil was produced, purchased, used, or stored.*

**RESPONSE TO RFI No. 12:**

Not applicable.

13. *If the answer to Question 10 is yes, identify the average annual quantity of each type hydraulic oil and transformer oil purchased, produced, used, or stored at each Facility.*

**RESPONSE TO RFI No. 13:**

Not applicable.

14. *If the answer to Question 10 is yes, identify the volume of each hydraulic oil and transformer oil disposed by the Facility annually and describe the method and location of disposal.*

**RESPONSE TO RFI No. 14:**

Not applicable.

15. *Provide the following information for each SOI (SOIs include any substance or waste containing the SOI) identified in your responses to Questions 5 and 10:*

- a. *Describe briefly the purpose for which each SOI was used at the Facility. If there was more than one use, describe each use and the time period for each use;*
- b. *Identify the supplier(s) of the SOIs and the time period during which they supplied the SOIs, and provide copies of all contracts, service orders, shipping manifests, invoices, receipts, canceled checks and other documents pertaining to the procurement of the SOI;*

- c. *State whether the SOIs were delivered to the Facility in bulk or in closed containers, and describe any changes in the method of delivery over time;*
- d. *Describe how, where, when, and by whom the containers used to store the SOIs (or in which the SOIs were purchased) were cleaned, removed from the Facility, and/or disposed of, and describe any changes in cleaning, removal, or disposal practices over time.*

**RESPONSE TO RFI No. 15:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 15 purports to seek information relating to KMPC's Facilities that is not relevant to contamination at the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: See Response to RFI No. 5.

16. *For each SOI delivered to the Facilities in closed containers, describe the containers, including but not limited to:*

- a. *the type of container (e.g. 55 gal. drum, tote, etc.);*
- b. *whether the containers were new or used; and*
- c. *if the containers were used, a description of the prior use of the container.*

**RESPONSE TO RFI No. 16:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 16 purports to seek information relating to KMPC's Facilities that is not relevant to contamination at the Site.

17. *For each container that Respondent used to store a SOI or in which SOIs were purchased ("Substance-Holding Containers" or "SHCs") that was later removed from the Facility, provide a complete description of where the SHCs were sent and the circumstances under which the SHCs were removed from the Facility. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.*

**RESPONSE TO RFI No. 17:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. KMPC further objects to Request No. 17 as it assumes that each SHC is somehow individually



identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their return to that particular customer. Accordingly, Request No. 17 purports to seek information that does not exist.

KMPC further objects to Request No. 17 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus KMPC has limited its review of documents and information to the COCs identified by EPA.

Additionally, as stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 17 purports to seek information regarding SHCs that were sent to sites other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: See Response to RFI No. 2.

*18. For each SHC that was removed from the Facility, describe Respondent's contracts, agreements, or other arrangements under which SHCs were removed from the Facility, and identity all parties to each contract, agreement, or other arrangement described. Distinguish between the Relevant Time Period and the time period since 1988.*

**RESPONSE TO RFI No. 18:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 18 purports to seek information regarding SHCs that were sent to sites other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: See Response to RFI No. 2.

19. *For each SHC, provide a complete explanation regarding the ownership of the SHC prior to delivery, while onsite, and after it was removed from the Facility. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.*

**RESPONSE TO RFI No. 19:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. KMPC further objects to Request No. 19 as it assumes that each SHC is somehow individually identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their return to that particular customer. Accordingly, Request No. 19 purports to seek information that does not exist. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 18 purports to seek information regarding SHCs that were sent to sites other than the BAD Site.

20. *Identify all individuals who currently have, and those who have had, responsibility for procurement of Materials at the Facilities. Also provide each individual's job title, duties, dates performing those duties, current position or the date of the individual's resignation, and the nature of the information possessed by each individual concerning Respondent's procurement of Materials.*

**RESPONSE TO RFI No. 20:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 20 purports to seek information relating to KMPC's Facilities that is not relevant to contamination at the Site. KMPC further objects to Request No. 20 as it purports to seek information regarding procurement of "Materials" at facilities other than the BAD Site and thus goes beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: See Exhibits 3 and 4.



21. *Describe how each type of waste containing any SOIs was collected and stored at the Facilities prior to disposal/recycling/sale/transport, including:*

- a. *the type of container in which each type of waste was placed/stored;*
- b. *how frequently each type of waste was removed from the Facility; Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.*

**RESPONSE TO RFI No. 21:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 21 purports to seek information regarding collection and storage of "any SOIs" at facilities other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

22. *Describe the containers used to remove each type of waste containing any SOIs from the Facilities, including but not limited to:*

- a. *the type of container (e.g. 55 gal. drum, dumpster, etc.);*
- b. *the colors of the containers;*
- c. *any distinctive stripes or other markings on those containers;*
- d. *any labels or writing on those containers (including the content of those labels);*
- e. *whether those containers were new or used; and*
- f. *if those containers were used, a description of the prior use of the container;*

*Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.*

**RESPONSE TO RFI No. 22:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. KMPC further objects to Request No. 22 as it assumes that each SHC is somehow individually identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their

return to that particular customer. Accordingly, Request No. 22 purports to seek information that does not exist.

As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." Moreover, the RFI defined "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, DDT, chlordane, dieldrin, and PCBs. KMPC further objects to Request No. 22 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, KMPC has limited its review of documents and information to the COCs identified by EPA. Additionally, KMPC objects to Request No. 22 as it purports to seek information regarding containers used to remove each type of waste containing any SOIs from the Facilities and taken to *any* other place during *any* time. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: See Response to RFI No. 2.

23. *For each type of waste generated at the Facilities that contained any of the SOIs, describe Respondent's contracts, agreements, or other arrangements for its disposal, treatment, or recycling and identify all parties to each contract, agreement, or other arrangement described. State the ownership of waste containers as specified under each contract, agreement, or other arrangement described and the ultimate destination or use for such containers. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.*

**RESPONSE TO RFI No. 23:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." Moreover, the RFI defined "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, DDT, chlordane, dieldrin, and PCBs. KMPC further objects to Request No. 23 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, KMPC has limited its review of documents and information to the COCs identified by EPA. Additionally, KMPC objects to Request No. 23 as it purports to seek information regarding waste generated at any Facilities that contained any SOIs and taken to *any* other place during *any* time. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: see Response to RFI No. 2.



24. *Identify all individuals who currently have, and those who have had, responsibility for Respondent's environmental matters (including responsibility for the disposal, treatment, storage, recycling, or sale of Respondent's wastes and SHCs). Provide the job title, duties, dates performing those duties, supervisors for those duties, current position or the date of the individual's resignation, and the nature of the information possessed by such individuals concerning Respondent's waste management.*

**RESPONSE TO RFI No. 24:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying all individuals who currently have, and those who have had, responsibility for KMPC's environmental matters at all of KMPC Facilities, including those that have no nexus to the BAD Site, is not feasible due to long history of existence/operations.

Notwithstanding the foregoing, and without waiver of its objections, KMPC responds as follows:

Mr. Robert Stetson (current employee)  
Kelly-Moore Paint Company  
Director of Risk Management  
987 Commercial Street  
San Carlos, CA 94070

Janet Bailey (current employee)  
Kelly-Moore Paint Company  
EH&S Coordinator  
987 Commercial Street  
San Carlos, CA 94070

Calvin Chun (current employee)  
Kelly-Moore Paint Company  
EH&S Manager at San Carlos Facility (former position)  
Plant Manager in Texas (current position)

Walter Leclerc (former employee)  
Director of Risk Management & Auditing  
Corporate EH&S Manager

Pat McDonald (former employee)  
Vice President of Loss Prevention

Also see former employee declarations in Exhibits 3 (Magrin) and 4 (Donoughue).

25. *Did Respondent ever purchase drums or other containers from a drum recycler or drum reconditioner? If yes, identify the entities or individuals from which Respondent acquired such drums or containers.*

**RESPONSE TO RFI No. 25:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying all drum recyclers or drum reconditioners from which KMPC has ever acquired such drums or containers is not feasible due to long history of existence/operations.

26. *Prior to 1988, did Respondent always keep its waste streams that contained SOIs separate from its other waste streams?*

**RESPONSE TO RFI No. 26:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. KMPC further objects to Request No. 26 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, KMPC has limited its review of documents and information to the COCs identified by EPA.

27. *Identify all removal and remedial actions conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or comparable state law; all corrective actions conducted pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and all cleanups conducted pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. where (a) one of the COCs was addressed by the cleanup and (b) at which Respondent paid a portion of cleanup costs or performed work. Provide copies of all correspondence between Respondent and any federal or state government agency that (a) identifies a COC and (b) is related to one of the above-mentioned sites.*

**RESPONSE TO RFI No. 27:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 27 purports to seek information regarding a broad range of removal and remedial actions, corrective actions and cleanups. Moreover, identifying all such removal and remedial actions is not feasible due to long history of existence/operations, the number of KMPC's locations, etc. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site. KMPC further objects to Request No. 27 to the extent that EPA is already in possession



of the requested documents, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

28. *Provide all records of communication between Respondent and Bay Area Drum Company, Inc.; Meyers Drum Company; A.W. Sorich Bucket and Drum Company; Waymire Drum Company, Inc.; Waymire Drum and Barrel Company, Inc.; Bedini Barrels Inc.; Bedini Steel Drum Corp.; Bedini Drum; or any other person or entity that owned or operated the facility located at 1212 Thomas Avenue, in the City and County of San Francisco, California.*

**RESPONSE TO RFI No. 28:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. DTSC conducted an extensive investigation of the BAD Site and KMPC's operations in connection with it. DTSC's files include extensive records concerning the Bay Area Drum Company, Inc. and other persons and entities that owned or operated the facility located at 1212 Thomas Avenue, in the City and County of San Francisco, California. KMPC understands that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows:

KMPC has not identified any communications between KMPC and the companies identified in this request in its possession.

29. *Identify the time periods regarding which Respondent does not have any records regarding the SOIs that were produced, purchased, used, or stored at the Facilities.*

**RESPONSE TO RFI No. 29:**

In addition to the General Objections set forth above, KMPC objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. In responding to the RFI, KMPC has undertaken a diligent and good faith search for, and review of, documents and information in its possession, custody or control and that are relevant to this matter. Moreover, KMPC understands that EPA is already in possession of DTSC's files regarding the BAD Site. As detailed above, in response to RFI No. 2 and in the exhibits to this response, KMPC did not send its drums to the BAD Site.

30. *Provide copies of all documents containing information responsive to the previous twenty-nine questions and identify the questions to which each document is responsive.*

**RESPONSE TO RFI No. 30:**

KMPC objects to Request No. 30 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, KMPC has limited its review of documents and information to the COCs identified by EPA. KMPC further objects to Request No. 30 as it purports to seek copies of documents containing information responsive to the previous twenty-nine questions. DTSC conducted an extensive investigation of the BAD Site and KMPC's operations in connection with it. DTSC's investigation included an information request to KMPC and the DTSC files include KMPC's Response to DTSC's information request, among other documents. We understand that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

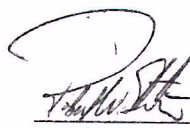
Notwithstanding the foregoing, and without any waiver of its objections, KMPC responds as follows: see Exhibits 1 – 7.

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**KELLY-MOORE PAINT COMPANY'S RESPONSES TO OCTOBER 15, 2009 EPA  
INFORMATION REQUEST**

Dated: 2/11/10

  
on behalf of Kelly-Moore Paint Company

Mr. Robert Stetson  
Kelly-Moore Paint Company  
Director of Risk Management  
987 Commercial Street  
San Carlos, CA 94070



### KMPC EXHIBITS

1. October 1, 1992 KMPC Response to DTSC Information Request
2. Ashland Chemical Company Manifests (Twelve Manifests)
3. Declarations of former KMPC employee L. Magrin
4. Declaration of former KMPC employee J. Donoughue
5. Letter from Ms. Mills (Pillsbury) to Ms. Cook (DTSC) regarding the Bay Area Drum Site Imminent and Substantial Endangerment Determination (May 7, 1996)
6. Letter from Mr. Coffin (Barg Coffin Lewis & Trapp) to Mr. Brown (DTSC) regarding Bay Area Drum Company (February 11, 2004)
7. Letter from Ms. Cook (DTSC) to Mr. Coffin (Barg Coffin Lewis & Trapp) regarding removal of KMPC as a responsible party at the Bay Area Drum Site (March 23, 2004)

## EXHIBIT 1

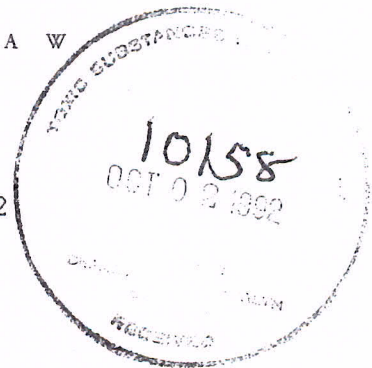


PILLSBURY, LEVINSON & MILLS

A T T O R N E Y S   A T   L A W

CHERYL RAE MILLS

October 1, 1992



**By Facsimile and Mail**  
(510) 540-3819

Ms. Monica Gan  
State of California EPA  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

**DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
"OFFICIAL FILE COPY"**

Re: Bay Area Drum Site  
1212 Thomas Avenue, San Francisco, California  
Responding Party: Kelly-Moore Paint Co., Inc.

Dear Ms. Gan:

We represent Kelly-Moore Paint Company, Inc. Kelly-Moore has undertaken an investigation in order to respond to your recent request for information concerning Kelly-Moore's involvement with the Bay Area Drum site. At this time, we are able to provide you with the following information.

1. Kelly-Moore has not located any records indicating drums shipped to the BAD site. In addition, your question requests shipments between 1948 and 1987. Following our conversation with your office and with the Heller, Ehrman office, it is our understanding that Kelly-Moore had no "alleged" association with the site after the early 1980's. We, therefore, are focusing on the time period before 1983. If any documents are located, we will promptly amend this response.
2. Not applicable. Kelly-Moore has no knowledge of any drums sent to the BAD site.
3. Not applicable. Kelly-Moore has no knowledge of any drums sent to the BAD site.
4. Not applicable.
5. Not applicable.

DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
"OFFICIAL FILE COPY"

6. Kelly-Moore has no knowledge of drums sent to the BAD site during the time periods indicated. It is Kelly-Moore's custom and practice to completely drain any drums sent for reconditioning. Specifically, the drivers who pick up the drums place them upside down to ensure that the drums have been completely emptied. We do not believe there is any residue left in any drums Kelly-Moore sends out for reconditioning.

7. If drums were sent to the site, based upon the information provided to Kelly-Moore, the drums would have been sent for reconditioning. No drums would have been sent for sale or disposal.

Kelly-Moore is hindered in responding to the State's inquiry. A request was made by our office to review the documents at the State concerning the site -- specifically, any documents implicating Kelly-Moore. It is our understanding that there are no such documents. To the contrary, the only link to Kelly-Moore is based upon testimony provided by two witnesses, Mr. Jack Hamilton and Mr. David Cannon.


The State refused to provide us with a copy of the witness statements. The State also refused to allow us to review the witness statements. The State suggested that we contact Mr. Joseph Armao at the Heller, Ehrman firm.

We did make that contact. We were told by Mr. Van Alsteyn of that firm that Kelly-Moore may have shipped drums to the site for reconditioning. Mr. Hamilton and Mr. Cannon seem to have some recollection of Kelly-Moore, but there is no documentation implicating Kelly-Moore.

Mr. Van Alsteyn refused to produce any specific documentation without Kelly-Moore first signing an agreement to join the FRP group. Under the circumstances, we are in a very difficult position, and we have no idea what "evidence" implicates Kelly-Moore. Under the circumstances, Kelly-Moore reserves the right to update this thirty-day response.

Please add our name and address to your mailing list. If you have any questions concerning the above, please feel free to contact me.

Sincerely,

  
Cheryl Rae Mills

CRM:eg



**EXHIBIT 2**

# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-8947

Date 3-29-79

Received From Kelly M... for Manuel Chavez

Address \_\_\_\_\_

City San Carlos

Purchased

Inventory

QUANTITY

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

92 1/20 Dpts Ounc

55 GAL. #3 OIL

142 No Dpts Ounc

55 GAL. OIL DEHEADERS

237 TOTAL

55 GAL. OIL AGITATORS

55 GAL. 20/18 GA. OIL

55 GAL. LINERS

237 To Be Shipped at Plant

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

**D 08073**

"If the above items are commingled, like items of similar quality will be returned."

Per [Signature]



# Myers Drum Company

6548 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLYmpic 2-6847

Date 12-19-78

Received From Kelly Moore for Island

Address

City S.C.

Purchased  
QUANTITY

Inventory ☒

55 GAL. #1 OIL TOP BUNG

130 55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

30 55 GAL. 20/18 GA. OIL

55 GAL. LINERS

(160) 66 #20 Dep. Drums 94 #15 Dep. Drums

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

DEPOSIT  
DRUMS

Car Number

D 06588

If the above items are commingled, like items of similar quality will be returned.

Per

# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-6847

Date 3-28-79

Received From Kelly Moore Paint for Almond

Address \_\_\_\_\_

City San Carlos

Purchased  
QUANTITY

Inventory

55 GAL. #1 OIL TOP BUNG	
55 GAL. #2 OIL TOP BUNG	
55 GAL. OIL SIDE BUNG	6-15-Dep. Drums.
55 GAL. #3 OIL	193-20-Dep. Drums.
55 GAL. OIL DEHEADERS	41 710-Dep. Drums.
55 GAL. OIL AGITATORS	240 Total.
55 GAL. 20/18 GA. OIL	
55 GAL. LINERS	
240 To be handled at Almond	
55 GAL. #1 QUIK LOX	
55 GAL. #2 QUIK LOX	
55 GAL. QL BOLT RING	
55 GAL. 17 H	
30 GAL. OIL	
30 GAL. QUIK LOX	
15 GAL. OIL	

Car Number

D 08071

If the above items are commingled, like items of similar quality will be returned.

Per



# Myers Drum Company

6549 San Pablo Avenue • • • Oakland, Calif. 94608

PHONE: OLympic 2-6847

Date 4-11-79

Received From Rocky Mace paint

Address San Antonio Texas

City San Carlos

Purchased

Inventory

QUANTITY

163 55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

2 55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

55 GAL. 20/18 GA. OIL

55 GAL. LINERS

1 55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. OL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

D 08597

"If the above items are commingled, like items of similar quality will be returned."

Per

# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-6847

Date 5-2-79

Received From

Willie Moore Point

Address

Bar Ashland Chem

City

San Carlos Ca

Purchased

Inventory ☒

QUANTITY

	55 GAL. #1 OIL TOP BUNG	
<u>52</u>	55 GAL. #2 OIL TOP BUNG	<u>20.00 Deposit</u>
	55 GAL. OIL SIDE BUNG	
	55 GAL. #3 OIL	
	55 GAL. OIL DEHEADERS	
	55 GAL. OIL AGITATORS	
<u>5</u>	55 GAL. 20/18 GA. OIL	<u>15.00 Deposit</u>
	55 GAL. LINERS	
<u>88</u>	<u>55 gal. #2 Oils. Within Deposit</u>	
	55 GAL. #1 QUIK LOX	
	55 GAL. #2 QUIK LOX	
	55 GAL. OL BOLT RING	
	55 GAL. 17 H	
	30 GAL. OIL	
	30 GAL. QUIK LOX	
	15 GAL. OIL	

Cor Number

**D 08854**

If the above items are comminuted like items of similar quality will be returned.

Per

Willie Moore



# Myers Drum Company

8549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-8847

Date 6-1-79  
Received From Kelly West Point for ashland Chem  
Address \_\_\_\_\_  
City San Carlos Ca

Purchased  
QUANTITY

Inventory ☒

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

222 55 GAL. 20/18 GA. OIL

55 GAL. LINERS

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

**D 10532**

"If the above items are commingled, like items of similar quality will be returned."

Per [Signature]

# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLYmpic 2-6847

Date 6-1-79

Received From Kelly mod Paint

Address \_\_\_\_\_

City San Carlos Ca

Purchased

Inventory ☒

QUANTITY

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

6 55 GAL. 20/18 GA. OIL

9 55 GAL. LINERS

55 GAL. #1 QUIK LOX

3 55 GAL. #2 QUIK LOX

55 GAL. OL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

**D 10531**

"If the above items are commingled, like items of similar quality will be returned."

Per [Signature]



# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-8847

Date 6-28-79

Received From

Address

City

Kelly Moore Paint  
For ahlenschem  
San Carlos Ca

Purchased

Inventory ☒

QUANTITY

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

240 55 GAL. 20/18 GA. OIL 20.00 Drill

55 GAL. LINERS

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

**D. 10540**

"If the above items are commingled, like items of similar quality will be returned."

Per

Paul [Signature]

FOR

# Myers Drum Company

6549 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-6847

ASHLAND DRUMS

Date 7-9-79

Received From KELLY MOORE

Address

City SAN CARLOS

CALIF

Purchased  
QUANTITY

Inventory ☒

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

2 55 GAL. OIL DEHEADERS NO 17E

2 55 GAL. OIL AGITATORS JUNK

236 55 GAL. 20/18 GA. OIL 20.00 DEPOSIT

55 GAL. LINERS

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

240 TOTAL

Car Number

D 09290

"If the above items are commingled, like items of similar quality will be returned."

Per

Larry O'Dell



# Myers Drum Company

6649 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLYMPIE 2-6847

ASHLAND CHEMICAL

Date 8-22-79

Received From KELLY MAORE PAINT CO

Address 1015 COMMERCIAL ST

City SAN CARLOS CALIF

Purchased

Inventory

QUANTITY

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

1 55 GAL. OIL DEHEADERS

2 55 GAL. OIL AGITATORS

189 55 GAL. 20/18 GA. OIL

55 GAL. LINERS

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

192 TOTAL

Car Number

D 09738

If the above items are commingled, like items of simi  
will be returned

Pay

Ray O'Neil

# Myers Drum Company

6546 San Pablo Avenue • Oakland, Calif. 94608

PHONE: OLympic 2-6847

Date

Received From Kelly Moore Paint Co. - San Francisco  
 Address Richland Chem. Dist.  
 City Newark

Purchased

Inventory

QUANTITY

55 GAL. #1 OIL TOP BUNG

55 GAL. #2 OIL TOP BUNG

55 GAL. OIL SIDE BUNG

55 GAL. #3 OIL

159 55 GAL. OIL DEHEADERS

55 GAL. OIL AGITATORS

55 GAL. 20/18 GA. OIL

55 GAL. LINERS

55 GAL. #1 QUIK LOX

55 GAL. #2 QUIK LOX

55 GAL. QL BOLT RING

55 GAL. 17 H-

30 GAL. OIL

30 GAL. QUIK LOX

15 GAL. OIL

Car Number

D 06569

14 of the above drums  
 covered at 30 Report

If the above items are commingled, like items of similar quality  
 will be returned  
 Per



**THIS SHIPPING ORDER**

must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

**CAL-PACIFIC Truck Lines Inc.**

1097 OLD COUNTY ROAD  
SAN CARLOS, CALIF. 94070 • (415) 593-1891

5555 SO. EASTERN AVE.  
BELL, CALIF. 90201 • Y2131 264-1253

## CARRIER.

SHIPPER'S NO.

AGENT'S NO.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

FROM Kelly Moore Port C AT San Carlos

DATE 3-7-

[illegible]

CONSIGNEE TO Ashtan Chemical 1/2 Myers Drive

DESTINATION Oakland STREET 2400 Park CITY Oakland COUNTY Calif. STATE Calif.

## ROUTING

DELIVERING CARRIER *Cal Da*

VEHICLE OR CAR INITIAL

ORDER NO.

**COLLECT ON DELIVERY**

\$\_\_\_\_\_ and remit to:

C.O.D. CHARGE	SHIPPER	<input type="checkbox"/>
TO BE PAID BY		

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

NO. PKGS.	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	WEIGHT (GROSS TO CUB.)	CLASS OR RATE	City		State
67	mty Dams	3350				
<p><i>Prepay + Charge Ashland Oregon Brahmco. Co.</i></p>						

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without receipt on the part of the consignee, the carrier shall not be liable therefor. The carrier shall not make delivery unless shipment is accompanied by a bill of lading and unless the carrier is not liable for freight and all other lawful charges.

Signature of Consignee: \_\_\_\_\_

If charges are to be prepaid, write or stamp here: "To be Prepaid."

*Prepay*

Received \$ \_\_\_\_\_ If receipt is required in payment of the charges on the property described herein.

Agent or Carrier: \_\_\_\_\_

PREP  
The signature here acknowledges each the amount of the charges.

¶ If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

The fibre is used for this shipment conform to the specifications set forth in the Bureau's certificate thereof, and all other requirements of Rule 5 of the Commodity Motor Freight Classification.

The signature here coincides with the original

SHIPPER. PE

Permanent address of shipper.

Agent must detach and retain this Shipping Order and must sign first Original Bill of Lading.





1 I, Lou Ann Magrin, hereby declare:

- 2 1. The following information is within my personal knowledge and, if called as a  
3 witness, I could and would testify competently thereto.
- 4 2. I was an employee of Kelly-Moore Paint Company, Inc. ("Kelly-Moore") from  
5 March 21, 1960 until I retired on December 12, 2000.
- 6 3. During my entire employ at Kelly-Moore I was either in training for or actively  
7 working as the raw material purchaser. As raw material purchaser my duties  
8 included, but were not limited to:
- 9 (a) performing stock and inventory control;
- 10 (b) assisting in the purchase of raw materials necessary for the manufacture of  
11 paint products; and
- 12 (c) reconciling receiving reports, bills of lading and invoices for raw materials  
13 received.
- 14 4. When raw materials were delivered to Kelly-Moore, I frequently met the delivery  
15 truck at the receiving department to check that the type and quantity of products  
16 received matched the products ordered and the bills of lading.
- 17 5. I specifically recall that materials received from Ashland Chemical Corporation  
18 ("Ashland") were delivered to Kelly-Moore in blue drums, a fact that made them  
19 distinguishable from other drums used at Kelly-Moore. I further recall that most  
20 Ashland drums were "deposit drums," meaning that Kelly-Moore would be  
21 charged for the drums if not returned to Ashland. It was therefore Kelly-Moore's  
22 policy and practice to return all drums to Ashland, regardless of whether they  
23 were deposit drums or not. Personnel in Kelly-Moore's receiving department  
24 would notify me when a stockpile of 20-40 Ashland drums had accumulated. It  
25 was my responsibility to contact the Kelly-Moore account representative at  
26 Ashland to schedule a date for an agent or representative of Ashland to pick-up  
27 the drums. I do not know where the Ashland representative or agent took the  
28 drums.

1 6. I have reviewed invoices from the files of Myers Drum Company, a predecessor  
2 of Bay Area Drum, that indicate that drums were received from Kelly-Moore  
3 Paint Company "for Ashland." Those invoices are consistent with the practice of  
4 Ashland picking up its deposit drums from Kelly-Moore and are not an indication  
5 that Kelly-Moore sent drums on its own to the Bay Area Drum Site. To the  
6 contrary, my recollection is that all Kelly-Moore drums sent to a re-conditioner  
7 were sent to the Lorentz Barrel and Drum site in San Jose, not to Myers Drum or  
8 Bay Area Drum.

9 I declare under penalty of perjury that the forgoing is true and correct to the best of my  
10 knowledge and recollection. Executed this 14<sup>th</sup> day of November 2003 in San Mateo County,  
11 California.

12 Lou Ann Magrin

13 Lou Ann Magrin  
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1 I, John Donoughue, hereby declare:

- 2 1. The following information is within my personal knowledge and, if called as a  
3 witness, I could and would testify competently thereto.
- 4 2. I have been an employee of Kelly-Moore Paint Company, Inc. ("Kelly-Moore")  
5 from 1972 until present.
- 6 3. From approximately 1975 through at least 1985, I worked as a receiver in Kelly-  
7 Moore's receiving department. My duties as a receiver included:
- 8 (a) unloading barrels containing bulk materials delivered to Kelly-Moore by its  
9 suppliers for use in the manufacture of paint products;
- 10 (b) sorting empty barrels upon which a deposit had been placed by the supplier  
11 ("deposit barrels") from those without a deposit; and
- 12 (c) loading empty barrels onto trucks or pallets for return to the supplier or for  
13 delivery to Lorentz Barrel and Drum for recycling or reconditioning.
- 14 4. It was Kelly-Moore's policy and practice to return all deposit barrels to the  
15 supplier so that Kelly-Moore would not be charged for the barrels.
- 16 5. I specifically recall that Ashland Chemical Corporation ("Ashland") had deposit  
17 barrels, which were sorted out and stacked on a pallet to be picked up by a  
18 representative or agent of Ashland. Ashland's barrels were always blue in color,  
19 and therefore distinguishable from barrels received from other suppliers or used  
20 by Kelly-Moore. While some of Ashland's barrels were not deposit barrels, it  
21 was Kelly-Moore's policy and practice to return all barrels received from  
22 Ashland.
- 23 6. I further recall contacting Kelly-Moore's raw materials purchaser, Lou Ann  
24 Magrin, once a stockpile of 20-40 Ashland drums had accumulated. Mrs. Magrin  
25 would arrange for the drums to be picked up by a representative or agent of  
26 Ashland. When the Ashland representative or agent arrived at the receiving  
27 department to pick up the deposit drums, a pallet with the Ashland drums would  
28 be backed up to the truck. The Ashland representative or agent would load the

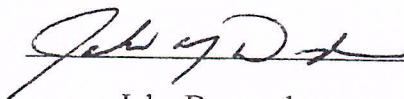


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Ashland drums into the truck and haul them away. I do not know where the Ashland representative or agent took the drums.

7. I have reviewed invoices from the files of Myers Drum Company, a predecessor of Bay Area Drum, that indicate that drums were received from Kelly-Moore Paint Company "for Ashland." Those invoices are consistent with the practice of Ashland picking up its deposit drums from Kelly-Moore and are not an indication that Kelly-Moore sent drums on its own to the Bay Area Drum Site. To the contrary, my recollection is that all Kelly-Moore drums sent to a re-conditioner were sent to the Lorentz Barrel and Drum site in San Jose, not to Myers Drum or Bay Area Drum.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and recollection. Executed this \_\_\_\_ day of November 2003 in San Mateo County, California.

  
John Donoughue





PILLSBURY, LEVINSON & MILLS

A T T O R N E Y S   A T   L A W

CHERYL RAE MILLS

May 7, 1996

Barbara J. Cook, P.E., Chief  
North Coast California  
Cleanup Operations Branch  
Department of Toxic Substances Control  
Region 2  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2737

Re: Bay Area Drum Site Imminent and Substantial Endangerment  
Determination and Order Docket No. I&SE 95/96-004

Dear Ms. Cook:

We represent Kelly Moore Paint Company, Inc. which has been listed as a respondent in the above captioned matter. We continue to be concerned that Kelly Moore's name keeps coming up in this litigation, yet, we can find absolutely no evidence indicating that Kelly Moore ever dealt directly, or indirectly, with the Bay Area Drum site. As a result, we are filing this notice of defense.

**NOTICE OF DEFENSE**

It is Kelly Moore's understanding that the only thing linking Kelly Moore to the site is the testimony of a truck driver named Jack Hamilton. We have done a thorough search of Kelly Moore's records and can find no indication that Kelly Moore sent drums to any of the operators you listed in your original correspondence. Obviously, we are questioning the veracity of Mr. Hamilton and/or his recollection is faulty.

Kelly Moore has records indicating it has dealt with other sites in the Bay Area. For example, Kelly Moore is involved in the Lorentz Drum & Barrel litigation because that is where drums were sent for reconditioning during the years that seem to be at issue in this matter. Obviously, Kelly Moore was not sending drums to more than one site. Based upon the fact Kelly Moore can not locate any documentation linking it to the site, nor do any of the individuals at Kelly Moore recall ever dealing with a Mr. Jack

Ms. Barbara J. Cook

May 7, 1996

Page 2

Hamilton, we must conclude that Kelly Moore did not have contact with this site.

We are very concerned that this individual has implicated Kelly Moore. We believe there is no basis for that implication and we question his motives in doing so. On behalf of Kelly Moore, we are looking at what options are available against Mr. Hamilton should his statements implicating Kelly Moore be proven false.

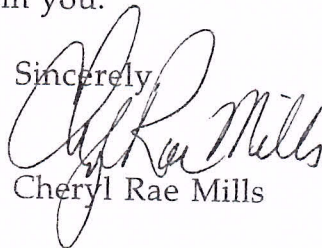
We understand from the "grapevine" that Mr. Hamilton is the only one who implicated Kelly Moore and that his testimony is very suspect. If his testimony were to be believed, there were ten times the number of barrels going to the site than in reality went to the site. In other words, Mr. Hamilton has "over remembered" picking up barrels because that amount of barrels simply did not go to the site.

In order to fully prepare its defense, Kelly Moore requests that Mr. Jack Hamilton be presented for deposition. It is difficult to challenge the charges leveled by the Department without having access to the accusers. We request and demand an opportunity to test his recollection and their veracity.

Please notify us when you will make this individual available. Furthermore, if you have any documentation that somehow links Kelly Moore to the site, we will be happy to look at that documentation and reassess our position. We are confident that no such documentation exists because no contacts with the site exist.

We look forward to hearing from you.

Sincerely,



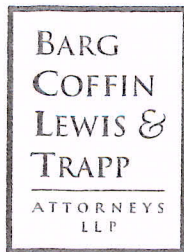
Cheryl Rae Mills

CRM:bls

cc: Ms. Susan Bertken  
Senior Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
P. O. Box 806  
Sacramento, California 95812-0806



**EXHIBIT 6**



One Market  
Steuart Tower, Suite 2700  
San Francisco, CA 94105-1475  
Tel 415 228 5400  
Fax 415 228 5450  
www.bcltlaw.com

February 11, 2004

**VIA FEDERAL EXPRESS**

Mr. Bill Brown, Project Manager  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

Mr. Jeffrey Mahan, Special Assistant  
Cost Recovery & Reimbursement Policy  
Department of Toxic Substances Control  
1001 "T" Street, 25<sup>th</sup> Floor  
Sacramento, CA 95812

Re: Bay Area Drum Company, San Francisco  
Site Code No. 200011

Dear Mr. Brown and Mr. Mahan:

As you know, the Department of Toxic Substances Control ("DTSC") listed our client, Kelly-Moore Paint Company, Inc. ("K-M"), as a Responsible Party ("RP") for the above-referenced site located at 1212 Thomas Avenue, San Francisco (the "Site") in Imminent and Substantial Endangerment Determination and Order #95/96-004 (the "Order"). This letter requests that DTSC reconsider this determination and remove K-M from the RP list for the reasons below.

**I. Background & Summary of DTSC Evidence Linking K-M to the Site.**

Prior to issuing the Order, DTSC conducted an investigation to identify RPs for the Site. As part of that investigation, we understand that DTSC interviewed two individuals, Jack Hamilton and David Cannon. According to the Order, both Hamilton and Cannon were former owners and operators of the Site. Order at pp. 5-6, §2.1.2. Hamilton also transported drums to the Site. Order at p. 6, §2.1.2.

At K-M's request, DTSC provided redacted notes of interviews with Mr. Hamilton and Mr. Cannon pertaining to K-M's involvement at the Site. *See* Attachment A (November 29, 2000 letter from DTSC to K-M). The notes pertaining to K-M's involvement at the Site state, in their entirety, the following:



**Notes from July 2, 1992 Hamilton Interview**

"In 1970, Bedini briefly resumed operating at the BAD site.

From 1970 to 1980 he picked up one load per week from Spencer Kellogg in San Carlos. 'Bob' was the contact man there. During the some [sic] time period he picked up 50 drums per week from Kelly Moore Paints."

**Notes from September 9, 1992 Cannon Interview**

"Kelly Moore of San Carlos had paint related products. BAD did not do business with them. That company primarily did business with Myers."

In attendance at the interviews was Mr. Nic Smith, a private investigator with Nicholls Investigative Agency, who had been retained by a core group of PRPs. K-M has obtained a redacted copy of a July 7, 1992 letter sent by Mr. Smith to DTSC transmitting his summary of the Hamilton interview (Attachment B). In that letter, Mr. Smith stated that during the course of the interview "...Mr. Hamilton did emphasize that the numbers he provided were his best estimates. Thus, I cannot, of course, vouch for the veracity of the numbers set forth..." Regardless, based on Hamilton's statement, Mr. Smith provided DTSC with a list of customers at the Site that had not previously been identified as PRPs, and a calculation of the total number of drums attributed to each. The number of drums attributed by Mr. Smith to K-M was 26,000 (50 drums a week for 10 years).

DTSC has not provided K-M with any additional evidence linking it to the Site, and K-M's own internal investigation in response to DTSC's request for information regarding its past practices and business relationship with companies that operated at the Site yielded no information linking it to the Site. See Attachment C (DTSC's August 31, 1992 request for information and K-M's October 1, 1992 response).

As a result, on May 7, 1996, K-M tendered a "Notice of Defense" to DTSC and explained that its records indicate that all K-M drums were sent to locations other than the Site. See Attachment D (May 7, 1996 Notice of Defense). DTSC responded by letter dated August 2, 1996, stating that it would not respond to K-M's Notice of Defense unless it sought to enforce the Order against K-M (Attachment E). To date, DTSC has taken no action to enforce the Order against K-M. However, K-M continues to receive periodic "Summary By Activity" reports and billing letters from DTSC for on-going remediation costs.

## **II. Results of K-M's Independent Investigation of its Connection to the Site.**

K-M has conducted a further thorough review of all documents in its files for the years 1970 through 1980, including invoices and shipping tickets, to determine whether any of its drums were sent to the Site. This investigation confirmed K-M's prior determination that K-M did not send any of its drums to the Site, but rather sent its drums to the Lorentz Barrel and Drum Site in San Jose.

K-M did locate, however, 12 manifests that confirm that Myers Drum Company (a former owner/operator at the Site) picked up drums from K-M facilities for the account of Ashland Chemical Company. These were not K-M drums. They were drums in which Ashland products were shipped to K-M. Ownership of the drums was retained by Ashland and they were picked up from K-M's facility on Ashland's account for reconditioning. *See* Attachment F for copies of these manifests.

Interviews of persons employed by K-M during the relevant time period confirm that K-M did not send any of its drums to the Site. *See* Attachment G (Employee Declarations). Those interviews confirm that K-M received drums from Ashland Chemical Corporation containing bulk materials used in the manufacture of K-M's paint products. Persons interviewed confirmed that the Ashland drums remained Ashland's property and that K-M was required to make a deposit with Ashland to ensure the return of the drums. Accordingly, it was K-M's policy and practice to return all deposit drums to Ashland. All such Ashland drums were blue in color, and therefore distinguishable from drums received from other suppliers and other drums used by K-M. Once a stockpile of Ashland drums had accumulated, K-M contacted Ashland, and Ashland arranged for the drums to be picked up by a transporter. The transporter would arrive at K-M's facility, load the Ashland drums, and then transport the Ashland drums for reconditioning. Such a practice is consistent with the above-described manifests which state that drums were "received from" K-M for Ashland.

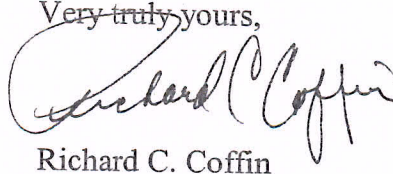
Based on these facts, K-M was erroneously identified as an RP for the Site. Other than the statement provided by Mr. Hamilton, there is no evidence linking K-M to the Site. Mr. Hamilton's statement that drums were picked up from K-M's facility is explained by the fact that these were Ashland drums that Ashland arranged to be picked up from K-M's facility. Accordingly, K-M requests that DTSC remove it from its RP list for the Site.



Mr. Bill Brown & Mr. Jeffrey Mahan  
February 11, 2004  
Re: Bay Area Drum Co., SF (Site Code 200011)  
Page 4

If you have any questions or wish to discuss any matters raised in this letter, please contact me at 415-228-5400.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard C. Coffin". The signature is fluid and cursive, with the first name "Richard" and last name "Coffin" clearly distinguishable.

Richard C. Coffin

RCC:efp  
Enclosures

cc: Larry Hoskins, Chief, Cost Recovery Unit (Via U.S. Mail)  
Walter Leclerc, Kelly-Moore Paint Company (Via U.S. Mail)







Terry Tamminen  
Agency Secretary  
Cal/EPA



## Department of Toxic Substances Control

Edwin F. Lowry, Director  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721



Arnold Schwarzenegger  
Governor

**RECEIVED**

March 23, 2004

MAR 26 2004

BARG COFFIN LEWIS & TRAPP, LLP

Mr. Richard C. Coffin  
Barg, Coffin, Lewis & Trapp  
One Market, Steuart Tower, Suite 2700  
San Francisco, California 94105-1475

Dear Mr. Coffin:

Thank you for your letter dated February 11, 2004, regarding the Bay Area Drum Company Site and your client, Kelly-Moore Paint Company, Inc. (Kelly-Moore). The Department of Toxic Substances Control (DTSC) has notified our cost recovery unit to remove Kelly-Moore from future billings for the Bay Area Drum Site.

If you have any questions regarding this letter, please contact Derek van Hoorn, with our Office of Legal Counsel, at 510-540-3916.

Sincerely,

Barbara J. Cook, P.E., Chief  
Northern California – Coastal Cleanup Operations Branch

cc: Mr. Jeff Mahan, Special Assistant  
Cost Recovery & Reimbursement Policy  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806

Mr. Larry Hoskins, Chief  
Cost Recovery Unit  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806